

-----Original Message-----

From: Theresa Noble Hill
Sent: Friday, January 05, 2007 10:33 AM
To: RGarren@riggsabney.com; lbullock@mkblaw.net
Cc: Michelle Bryce; 'Bond, Michael R.'
Subject: re: Monday's ESI Meeting

Rick and Louis,

I set up a conference call number for all parties for Monday's ESI meet and confer commencing at 9:30 a.m. Some local attorneys may also join you in your office. We are hopeful that a collective discussion, followed by our individual meetings will result in an efficient use of everyone's time.

We believe that some common issues that require joint discussion include:

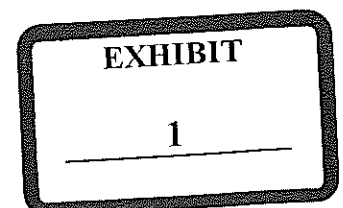
- the identity of the ESI liaisons (Paragraph B(2) from the ESI Order);
- Confidentiality issues (Paragraph B(17);
- Public data (Paragraph B(18);
- Privilege issues (Paragraph B(19);
- Supplemental Initial Disclosures (Paragraph B(21);
- Inadvertent production (Paragraph B(22); and
- Discovery mechanisms (Paragraph B(23).

If there are any others that you would like to add to the list, please advise so that we can all be prepared.

With respect to the State's ESI, we believe that all Defendants are interested in essentially the same information from the State concerning ESI. We understand that you were preparing to discuss the State's ESI with Tyson on Monday. The group is interested in obtaining that same information that you were planning on sharing with Tyson. I understand per our call today that due to scheduling difficulties, there may be some areas that the State may not be able to address in detail on Monday morning. On Monday, we can discuss methods for providing that information to the larger group throughout our discussions next week.

If you would like to discuss this meeting in any more detail, please do not hesitate to contact me. We are hopeful that we can efficiently use our time. We also recognize that Tyson needs to complete their discussion with you Monday morning concerning Tyson's ESI.

Theresa N. Hill



RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS

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January 23, 2007

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THOMAS M. ARNOLD
RYAN J. BARNES
LISA K. BOWLE
DONALD M. BRIDGEMAN
MELISSA A. BROWN
WILLIAM A. BOWLES
RICHARD B. BOYLE, IV
KELLY L. BRATCHER
H. JAMES BRIGGS
PETER W. BRIDGES
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RICHARD P. POGGIO
DAVID L. PRICE
VICTORIA L. RAGLEY
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M. DAVID RIGGS
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RANDALL A. RINQUEST
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MARY J. ROBERTS
WILLIAM C. SEARCY
KRISTEN E. SHILLINGTON
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ROBERT P. SMITH
ROBERT M. SMITH
SCOTT D. SMITH
BETTY J. SOMMERS
BEVERLY A. STEWART
CHRISTOPHER B. SWANSON

STEPHANIE L. THEBAUT
DAVID H. THOMAS
MARLEY W. THOMAS
REX W. THOMPSON
SONJA M. TREF
MICHAEL C. TURPIN
PHILIP J. VANCE
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BRIAN S. WILKINSON
DOUGLAS A. WILSON
JERRY L. WITT
MICHAEL P. WOMACK
COURTNEY M. WOLFE
GARY W. WOOD
TRACY S. ZAHM

Cl Counsel
Bryan P. Abney
E. Bryan Hanson

John Tucker
Theresa Noble Hill
Colin Hampton Tucker
Rhodes, Hieronymus, Jones, Tucker & Gable
100 W. 5th St., Suite 400
Tulsa, Ok 74121

Re: *The State of Oklahoma et al. vs. Tyson Foods, Inc., et al.*

Dear Counsel::

Please find enclosed the ESI Disclosure. This is the information the agencies have produced to us for the State's disclosure. Due to the state statute regarding terrorism this data has been marked confidential. 50 O.S. § 24A.28(E). If you have questions please feel free to call me.

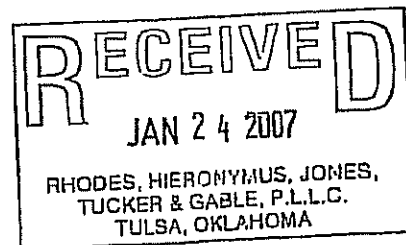
We will next need to meet to determine the form of the Order that will be due February 15, 2007.

Very truly yours,

Richard T. Garren/dpe

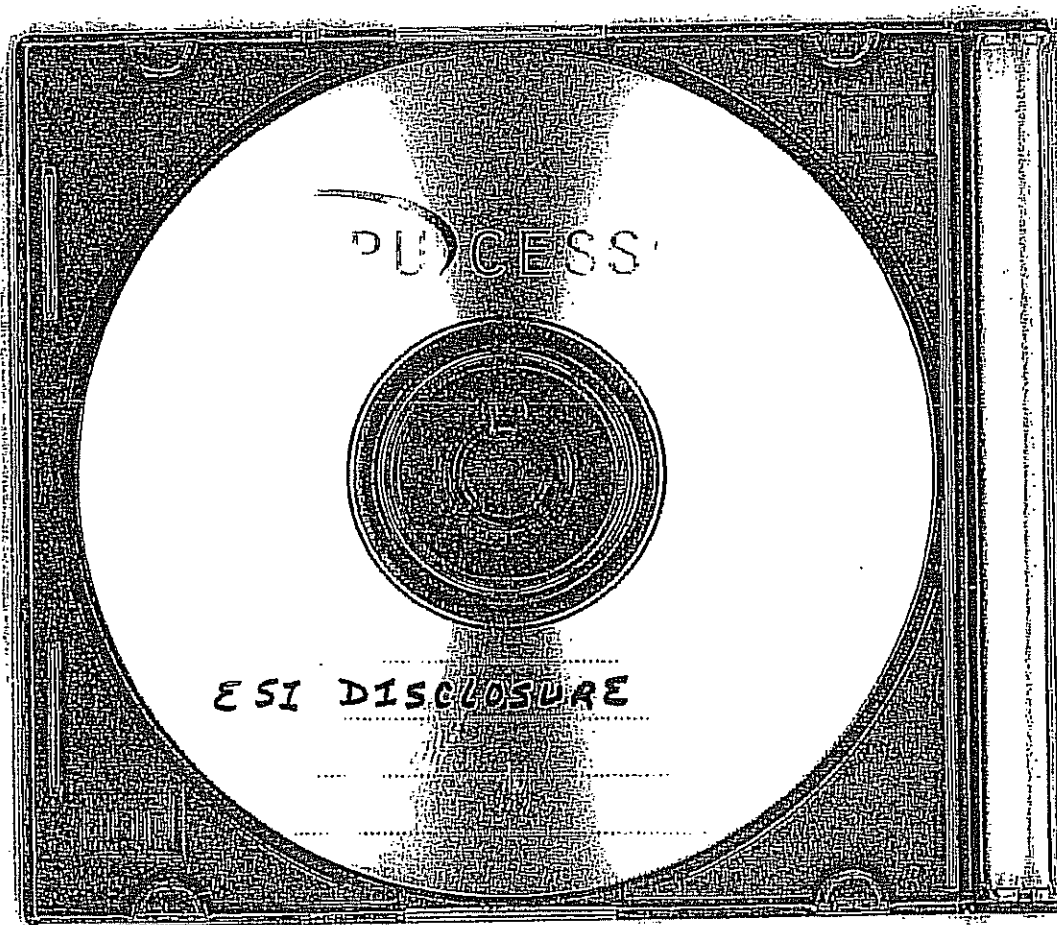
Richard T. Garren
FOR THE FIRM

RTG/dpe
Enclosure



EXHIBIT

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EXHIBIT

3

-----Original Message-----

From: Arens, Sue [mailto:sue.arens@kutakrock.com]
Sent: Tuesday, February 06, 2007 9:25 AM
To: driggs@riggsabney.com; rgarren@riggsabney.com; rnance@riggsabney.com;
sgentry@riggsabney.com; sweaver@riggsabney.com; doug_wilson@riggsabney.com;
jlennart@riggsabney.com; lbullock@mkblaw.net; rmiller@mkblaw.net; dpage@mkblaw.net;
fbaker@motleyrice.com; lheath@motleyrice.com; bnarnold@motleyrice.com;
lward@motleyrice.com; cxidis@motleyrice.com; Bartley, Sherry P.; Bronson, Vicki; Burch,
Kelly Hunter; Edmondson, Drew; Ehrich, Delmar R.; Elrod, John R.; Freeman, Bruce W.;
Graves, James M.; Grever, Thomas J.; Griffin, Jennifer S.; Hammons, Trevor; thillcourts;
Hixon, Philip; Jones, Bruce; Lay, R. Thomas; Lee, Krisann Kleibacker; Longwell, Nicole;
Mann, Dara D.; McDaniel, A. Scott; Narwold, William H.; Owens, George W.; Redemann, Robert
P.; Rose, Randall E.; Sanders, Robert E.; Senger, David C.; Singletary, Robert; Colin H.
Tucker; jtuckercourts; West, Terry W.; Williams, E. Stephen; Zeringue, Lawrence W.
Cc: Bond, Michael R.
Subject: State of Oklahoma's ESI Disclosures

A conference call has been set up for Friday, February 9, 2007 at 9 a.m. CST to discuss
the State of Oklahoma's ESI Disclosures in the State of Oklahoma, et al. v. Tyson Foods,
Inc., et al. case. The dial in information is as follows:

Dial in -- 1-800-423-1988
Passcode -- 1037863

If you have any questions, please feel free to give me a call at 479-695-1939.

Sue Arens
Paralegal
Kutak Rock LLP
The Three Sisters Building
214 West Dickson Street
Fayetteville, Arkansas 72701
Telephone 479-973-4200
Fax 479-973-0007
sue.arens@kutakrock.com

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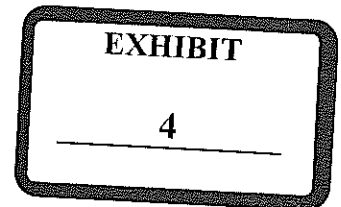
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DARA D. MANN
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ATLANTA OFFICE: 678-627-8190

March 13, 2007

Richard T. Garren
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119



Re: State of Oklahoma vs. Tyson, et al.

Dear Mr. Garren:

I am writing to follow-up on the issues raised during our initial meet and confer regarding ESI. Preliminarily, I wish to reemphasize that, to the extent our discussions of Cargill's ESI concern proprietary information, these discussions are highly confidential and should be afforded the same protection as any other "Confidential-Attorneys' Eyes Only" information exchanged in the course of this litigation.

During our December 12, 2006 meet and confer, Cargill provided the State with information including but not limited to the identity of Cargill's ESI liaisons and the functionality, preservation, retention, backup policies, accessibility, integrity, and searchability of programs, applications, and systems used by Cargill's turkey production business, that contain ESI.

Also at that meeting, Cargill advised the State that many people within Cargill could be considered "ESI custodians," and that Cargill would need more information from the State as to which programs and subjects the State seeks additional information for so that Cargill may direct the State to the appropriate custodian(s) for the State's inquiries. For example, the person most familiar with the functionality of a particular program may not be the same person most familiar with the technical processing of that same program, and these people may or may not be the persons most knowledgeable about other aspects of other programs.

Though the State has not provided any additional information as to what programs, systems, applications, or topics it would like to discuss with Cargill ESI custodians, Cargill identifies Richard Burr and Dennis Fullbright as persons with general knowledge of many of

Mr. Richard Garren
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Cargill's relevant ESI applications. Mr. Fullbright is familiar with the purposes and functionality of many turkey production applications, and Mr. Burr is familiar with the technical functioning of many of these same applications. Cargill stresses that these gentlemen will not know the answers to all questions regarding Cargill's ESI, and that until specific topics and applications are designated, Cargill is unable to provide an accurate list of custodians able to answer questions on these topics. Messrs. Burr and Fullbright are identified as a starting point, not an end point.

In addition to the above-described information, you requested that Cargill provide the State with the following information for each application identified by Cargill:

- Application origin and maker;
- Programming language in which the application was developed;
- Hardware on which the application is accessed;
- Operating system(s) used to run the application;
- Application platforms used to run the application;
- Type and version of database (if any) used to store application data;
- Hardware which runs the server side, client side and database (if any) of the application;
- Software used to backup the application;
- Frequency of the application backup; and
- Media on to which the application is backed up.

You also asked for a network map of Cargill's electronic systems.

Our review of the information provided by the State in response to the Court's December 5, 2006 Order Implementing Rules for Discovery of Electronically Stored Information ("Order") regarding its own ESI shows that, with few exceptions, the State has not provided this sort of information to Cargill for any application for any agency. Cargill still does not understand why the State desires this information, and as it is clearly outside the scope of the Order, Cargill reserves the right to object to the provision of this information. Further, it may be unduly burdensome to collect all of this information to the degree of detail requested by the State. However, if the State continues to seek this information from Cargill, it should be prepared to provide the same information for all of its own applications for each of its relevant agencies, offices, and divisions to Cargill. It may be helpful for the State and Cargill to set up another meet and confer prior to the March 15, 2007 deadline set by the parties' Stipulated Order concerning Discovery of ESI in order to discuss this issue and determine whether the utility of the collection and exchange of this information outweighs its burden. Following such a conversation, Cargill will respond to the State's request, including with any pertinent objections.

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In addition to the foregoing, Cargill has determined that the State's responses to the Order are deficient in several respects. First, the State has not provided any information on any topic regarding the following agencies, offices, and divisions of the State:

- Office of the Secretary of the Environment;
- Department of Mines;
- Corporation Commission;
- Department of Health;
- Governor's Office;
- State Legislature; and
- Any other agency, office or division of "the State" which might possess discoverable ESI.

It was our understanding from the January 12, 2007 meet and confer with the various defendants that the State would provide this information, but several weeks have passed without supplementation from the State. Please advise as to whether the State intends to provide information regarding these agencies', offices', and divisions' ESI.

Second, the State's general approach to responding to the Order seems to have been to identify custodians or persons most knowledgeable about certain issues rather than providing the information required by the Order. This approach is clearly violative of the Order, as the Order specifically contemplated that the parties would come to the meet and confer prepared to discuss the enumerated items, not prepared to identify *others* who could discuss the enumerated items.

Third, in responding to the Order, the State elected to provide the various defendants with agency "questionnaires" rather than directly discussing each of the 23 points set forth in the Order. The State further structured its January 12 meet and confer around the questionnaires, rather than addressing the Order's discussion points. The information so provided by the State does not provide sufficient information for all agencies regarding the following sections of the Order:

- § I(B)(6): identification of readily accessible ESI;
- § I(B)(7): identification of ESI which is not readily accessible;
- § I(B)(9): discussion of methods to ensure ESI integrity and preservation;
- § I(B)(10): identification of deleted ESI and the restoration thereof;
- § I(B)(11): discussion of searchability of e-mail;
- § I(B)(12): identification of ESI not intended to be searched;
- § I(B)(13): identification of potential problems in responding to electronic discovery;

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- § I(B)(15): discussion of software needed to review produced ESI; and
- § I(B)(20): methods and costs of retrieving ESI from each system.

The utter failure of the State to discuss these points of the Order must be remedied.

Further, to the extent that the questionnaires and the State's January 12 discussion thereof purports to address the remaining subsections of § I(B) of the Order on behalf of the Oklahoma Department of Environmental Quality ("ODEQ,"), Oklahoma Department of Agriculture Food and Forestry ("ODAFF"), Oklahoma Conservation Commission ("OCC"), Oklahoma Tourism and Recreation Department ("OTRD"), Oklahoma Water Resources Board ("OWRB"), Oklahoma Department of Wildlife Conservation ("ODWC"), and the Oklahoma Scenic Rivers Commission ("OSRC") (collectively, the "Agencies"), Cargill has identified the following deficiencies:

- § I(B)(3): The questionnaires provided some detail for most agencies regarding hardware, operating systems, applications, and servers, but the State did not provide a complete description of the nature, scope, organization, and format of databases and other applications and electronic storage systems used by each of the Agencies. Although this sort of information was provided as to some programs during the State's meet and confer, it was not provided in sufficient detail to allow Cargill to determine which applications and systems may have potentially responsive ESI. Further, none of this information was provided for the OCC;
- § I(B)(4): Limited historical information regarding the Agencies' records retention policies inasmuch as certain agencies generally referenced their compliance with the State of Oklahoma's General Records Disposition Schedule and various other schedules. However, these disposition schedules do not appear to protect potentially responsive info from destruction (as described below in the discussion of the State's deficient response to § I(B)(8) of the Order), and the State has not provided any additional detail regarding the Agencies' efforts to preserve potentially relevant ESI and hard copy documents following the onset of litigation. For example, when asked to provide information about the implementation of a litigation hold, the ODEQ referred back to the General Records Disposition Schedule, which is intended to purge rather than preserve documents, and the ODWC and OSRC simply left the questionnaire blank. Further, even if the General Records Disposition Schedule served as a preservation policy, the various agencies' description of this policy are themselves inconsistent. Where the ODAFF, OCC, ODEQ, and OTRD state that there have been no changes to this policy, the OWRB states that it has had "numerous amendments." Thus, the Agencies simply have not provided information about document preservation. To this end, for each Agency please provide the following:

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- Backup schedules for each application and system;
 - A description of janitorial services for all applications and systems;
 - A description of systems policies that may result in the deletion of ESI for all application, database and e-mail systems (e.g., mailbox size limits and e-mail retention periods);
 - A copy of all records retention policies for all Agencies, identifying retention periods for ESI and hard copy documents for all application, database and e-mail systems, including:
 - The OWDC April 28, 2005 Amendments to Records Disposition Schedule 82-18;
 - The policy implemented by the OWRB Executive Director on July 17th
 - The OTRD Records Disposition Schedule; and
 - All versions of and amendments to the General Disposition Schedule for the relevant time period [since 1952?];
 - A description of the measures taken to suspend both systems and records retention policies with regard to potentially discoverable ESI once litigation commenced; and
 - A description of all measures taken to preserve potentially relevant ESI and hard copy documents once litigation commenced.
- § I(B)(5): Although the questionnaires provided some detail regarding hardware, operating systems, applications, and servers, the State has not identified the types and subject matter of potentially discoverable ESI in the Agencies' various systems and applications. Further, the State has not identified the specific electronic locations (whether in systems, applications, repositories, archives, media, etc.) containing all potentially discoverable ESI.
 - § I(B)(8): Although several agencies (such as the ODAFF, OCC, and ODEQ) state that they have not lost or destroyed any potentially discoverable ESI, these statements are contradicted by the same agencies' statements that disposition schedule procedures have not been suspended or otherwise altered. The General Records Disposition schedule, though, is not a litigation hold and does not have any provisions to address spoliation in this case.

Finally, as to the information that was actually provided by the questionnaires, Cargill has identified the following deficiencies:

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Oklahoma Department of Environmental Quality

- The questionnaire states that “‘Legacy’ systems are retired and their data is moved to current systems[,]” but does not state what “legacy” system generated the ESI, where the data was historically housed, whether the backup tapes for the legacy system were destroyed, or what legacy data was migrated to live systems;
- The questionnaire lists Microsoft SQL Database, File Maker Pro, and MS Access as platforms used by the agency but does not list the applications run from these platforms;
- The questionnaire states that “[u]ser PCs should not contain business data[,]” but it seems unlikely that no user ever employed any local save function. Please explain why “[u]ser PCs should not contain business data”; and
- The questionnaire states that “[a]lthough we do not have a documented systematic approach to [document and data retention], it is widely understood . . .” but does not state what the retention system is but only references an attachment which was not provided.

Oklahoma Department of Agriculture Food and Forestry

- The questionnaire provides a list of agency employees, but it not clear whether this is also a list of the agency’s ESI custodians or of some other group;
- Though the questionnaire provides a list of client side hardware, it is unclear whether this list includes laptops, desktops, other hardware, or some combination thereof;
- No legacy systems have been identified for this agency;
- The questionnaire lists Access 2000 and Oracle 9i as platforms used by the agency but does not list the applications run from these platforms; and
- According to the questionnaire, no .pst email files are generated by this agency. Please confirm that this is the case.

Oklahoma Conservation Commission

- The questionnaire states that identification of potentially responsive media, systems, and data types, including ESI from current systems, legacy systems, and backup

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tapes, will be forwarded separately, but we have not received any supplementation of this information. Consequently, the agency has provided no information regarding § I(B)(3) of the Order.

Oklahoma Tourism and Recreation Department

- The questionnaire refers to an attached inventory list of systems housing potentially responsive data, but no such list was attached;
- No information was provided regarding the communication and enforcement of the retention policy for those employees who are not part of the “Executive Staff”;
- In response to questions regarding legacy systems, the questionnaire states “n/a.” It is unclear whether this means that the agency has no legacy systems or whether the agency intended something else by this response;
- No information was provided regarding the nature of any ESI that was potentially deleted after the onset of litigation;
- The questionnaire lists Microsoft Access 97, Microsoft Access 2003, and Microsoft SQL 2000 as platforms used by the agency but does not list the applications run from these platforms;
- The questionnaire states that a list of users that employ “other ISP’s” for email was attached, but no such list was provided by the State, and no information was provided regarding the email retention and preservation policies of these users; and
- No back up systems or media were identified for this agency.

Oklahoma Water Resources Board

- No information was provided regarding the migration of legacy ESI to current applications;
- No years are provided with the dates which state when “procedures in compliance with the litigation hold were enforced within this department[:]”
- The questionnaire does not discuss the location and retention of .pst files; and

Mr. Richard Garren
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- The questionnaire lists Microsoft Access 2000 and Microsoft SQL 2000 as platforms used by the agency but does not list the applications run from these platforms.

Oklahoma Department of Wildlife Conservation

- The questionnaire states that “various network shares” may house potentially responsive data but does not identify which network shares these are;
- The questionnaire states that “various web-mail providers” are used by “field personnel,” but does not identify which web-mail providers these are or how the processing and storage of mail “varies by user”;
- The questionnaire states that “individual users can potentially use various other [in addition to Microsoft SQL 2000] database applications” but does not identify which databases or users these are;
- The questionnaire does not identify the “various versions” of Microsoft Word, Corel Word Perfect, Microsoft Excel, and Corel Quatro used by the agency;
- No information was provided regarding the functionality of ARC IMS and the data generated and stored by this application;
- The questionnaire does not identify the “various system, application, and user data” captured by back up tapes;
- The questionnaire does not provide information regarding the timing, communication, and enforcement of the agency’s document retention policy and does not identify any retention policies in place prior to April 28, 2005;
- No legacy systems were identified by the agency;
- The agency’s email client was not identified; and
- The questionnaire lists Microsoft SQL Server 2000 as a platform used by the agency but does not list the application(s) run from this platforms.

Oklahoma Scenic Rivers Commission

- According to the questionnaire, the agency does not utilize any databases. Please confirm that this is correct;

Mr. Richard Garren
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- The questionnaire indicated that a retention policy has been communicated verbally, but no substantive detail regarding this policy was provided and no detail was provided with regard to the efforts made to preserve potentially relevant ESI and hard copy documents once litigation commenced;
- The questionnaire states that the agency's data retention policy is to "generally keep[] email (except SPAM)", but does not state when this policy was implemented, the manner of its communication or enforcement, and when emails other than spam are not kept; and
- The questionnaire states that "E. Fite has lost emails due to system crashes in the past several months", and that "some emails [were] lost due to system crashes on Ed Fite['s] computer[,]" but does not state the duration or extent of this loss, does not discuss the potential restoration of this ESI, and does not discuss methods to ensure the integrity of ESI going forward.

Please contact me at your earliest convenience to set up a time to discuss these issues.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Mann', with a stylized, cursive script.

Dara D. Mann

cc: J. Trevor Hammons

fb.us.1861804.03

From: Trevor.Hammons@oag.ok.gov [mailto:Trevor.Hammons@oag.ok.gov]
Sent: Wednesday, March 28, 2007 4:02 PM
To: Mann, Dara D.; Thill@rhodesokla.com; rgarren@riggsabney.com
Subject: ESI letter sent to the State

Ms. Mann,

We are in receipt of your letter dated March 13, 2007 wherein you have listed what you believe to be shortcomings in the State's ESI disclosures. We are preparing a formal response back to you and apologize for the delay.

In your letter you stated "...but the State did not provide a complete description of the nature, scope, organization, and format of databases and other applications and electronic storage systems used by each of the Agencies. Although this sort of information was provided as to some programs during the State's Meet and Confer, it was not provided in sufficient detail to allow Cargill to determine which applications and systems may have potentially responsive ESI." If you will recall during our Meet and Confer, I went through the agencies and described the databases and systems at the agencies and gave you the opportunity to ask further questions about the systems. I don't recall any further questions. If you can tell us specifically what agency and system you feel has not been explained then that will help with our response to your letter.

Again, I apologize for the delay and our response and it will be forthcoming.

Trevor

Oklahoma Office of the Attorney General
Environmental Protection Unit
313 N.E. 21 St.
Office: (405) 522-2801
Fax: (405) 522-0608

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EXHIBIT

5

From: Mann, Dara D.
Sent: Wednesday, April 04, 2007 4:03 PM
To: 'Trevor.Hammons@oag.ok.gov'; 'Thill@rhodesokla.com'; 'rgarren@riggsabney.com'
Subject: RE: ESI letter sent to the State

Mr. Hammons,

Thank you very much for acknowledging my letter of March 13th. In that letter, I outlined in great detail Cargill's continuing concerns about the information on ESI provided by the State in the agency questionnaires and the February 9, 2007 meet and confer. I will look forward to receiving the State's response.

In the meantime, as requested in your email, I will attempt to further clarify why Cargill believes the information conveyed by the State thus far is incomplete. During the meet and confer, the State provided additional information regarding many of the applications identified on the agency questionnaires. However, in several instances, the questionnaires identified only the technology underlying a platform and the State failed to provide any information identifying and describing the applications that run on the platform during the meet and confer.

By simply disclosing the existence of "SQL," "Access," and "Oracle" databases in the agency questionnaires, the State has done the ESI equivalent of informing Cargill that it has "a filing cabinet." This "disclosure" provides no information regarding the type and subject matter of potentially discoverable data. Cargill is not merely requesting information about "filing cabinets." Information must also be provided about the contents of each filing cabinet. Are there "folders" (i.e. databases) in the Oracle "cabinet" that contain relevant ESI? What are the names of these databases? What information is stored in these databases?

While I will not attempt to outline again every instance in which this has occurred with the information provided by the State, one example of this occurring is where the State informed Cargill that that ODEQ runs a SQL database platform (i.e. has a filing cabinet), but has not stated what applications run on this database platform (i.e. what folders are in the cabinet), or what information is in this application's database (i.e. what kind of documents are in the folders).

In other instances, the State named and described applications without identifying the platform or electronic location of the records, databases, reports, information, etc. created and maintained by those applications that may contain relevant ESI. For example, is ODWC's ARC IMS data located within the application, in a database, on file servers, saved locally, or located somewhere else?

These are merely illustrative examples, typical of the problems encountered with the State's disclosures, but I hope that this discussion clarifies the statement you reference from my March 13th letter.

--Dara

LAWYER BIOGRAPHIES | PRACTICE EXPERIENCE | CONTACT US

Dara D. Mann
Faegre & Benson LLP
2200 Wells Fargo Center

EXHIBIT

6

| | |
|---|---|
|  Faegre & Benson LLP | 90 South Seventh Street Minneapolis, MN 55402-3901 612-766-7089 / FAX 612-766-1600 678-627-8190 ATLANTA DMann@faegre.com |
| Biography Download My Contact Info as V-Card www.faegre.com | |
| MINNESOTA COLORADO IOWA LONDON FRANKFURT SHANGHAI | |

From: Trevor.Hammons@oag.ok.gov [mailto:Trevor.Hammons@oag.ok.gov]
Sent: Wednesday, March 28, 2007 4:02 PM
To: Mann, Dara D.; Thill@rhodesokla.com; rgarren@riggsabney.com
Subject: ESI letter sent to the State

Ms. Mann,

We are in receipt of your letter dated March 13, 2007 wherein you have listed what you believe to be shortcomings in the State's ESI disclosures. We are preparing a formal response back to you and apologize for the delay.

In your letter you stated "...but the State did not provide a complete description of the nature, scope, organization, and format of databases and other applications and electronic storage systems used by each of the Agencies. Although this sort of information was provided as to some programs during the State's Meet and Confer, it was not provided in sufficient detail to allow Cargill to determine which applications and systems may have potentially responsive ESI." If you will recall during our Meet and Confer, I went through the agencies and described the databases and systems at the agencies and gave you the opportunity to ask further questions about the systems. I don't recall any further questions. If you can tell us specifically what agency and system you feel has not been explained then that will help with our response to your letter.

Again, I apologize for the delay and our response and it will be forthcoming.

Trevor

Oklahoma Office of the Attorney General
Environmental Protection Unit
313 N.E. 21 St.
Office: (405) 522-2801
Fax: (405) 522-0608
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9/5/2007

From: Theresa Noble Hill [mailto:THill@rhodesokla.com]
Sent: Thursday, April 12, 2007 4:41 PM
To: Trevor.Hammons@oag.ok.gov
Cc: Mann, Dara D.; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; Michael.Bond@KutakRock.com; phixon@mcdaniel-lawfirm.com; rgarren@riggsabney.com; rsanders@youngwilliams.com; vbronson@cwlaw.com; Lori A. White
Subject: RE: ESI Order, Dkt. 1125

Trevor,

I will confirm with the other Defendants re: time for a conference call on Monday.

Can you advise what agencies you will be prepared to discuss

Also, will you be prepared to address the deficiencies raised in Cargill's correspondence?

Theresa

-----Original Message-----

From: Trevor.Hammons@oag.ok.gov [mailto:Trevor.Hammons@oag.ok.gov]
Sent: Thursday, April 12, 2007 3:25 PM
To: Theresa Noble Hill
Cc: Mann, Dara D.; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; Michael.Bond@KutakRock.com; phixon@mcdaniel-lawfirm.com; rgarren@riggsabney.com; rsanders@youngwilliams.com; vbronson@cwlaw.com
Subject: re: ESI Order, Dkt. 1125

Theresa,

Since April 15th is on a Sunday, we are proposing a call on Monday the 16th. We will be submitting our supplemental initial disclosures on that day. As it stands now, we are not intending to use any "electronically stored information...that the disclosing party may use to support its claims or defenses" for the Oklahoma Legislature, Oklahoma Governors Office, Oklahoma Corporation Commission, and the Oklahoma Department of Mines. Fed.R.Civ.P. 26(a)(1)(B). Of course, if we determine that we will be using any electronically stored information from the above agencies to support our claims or defenses then we will supplement our disclosures. Any other agencies or entities that we may use to support our claims or defenses will be listed on our supplement disclosures. Rick and I are pretty free all day on Monday. Can you poll your colleagues and let me know a time so that we can schedule our call?

J. Trevor Hammons

EXHIBIT

7

Oklahoma Office of the Attorney General
Environmental Protection Unit
313 N.E. 21 St.
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"Theresa Noble Hill" <THill@rhodesokla.com>

04/11/2007 10:05 AM

To <rgarren@riggsabney.com>, <Trevor.Hammons@oag.ok.gov>
cc <Michael.Bond@KutakRock.com>, <rsanders@youngwilliams.com>, "Dara D." <DMann@faegre.com>, <jgraves@bassettlawfirm.com>, <phixon@mcdaniel-lawfirm.com>, <vbronson@cwlaw.com>, <jgriffen@lathropgage.com>

Subject re: ESI Order, Dkt. 1125

Rick and Trevor,

I am writing on behalf of the Defendants to request a date to conduct the State's initial conference to address the additional State agencies, divisions and offices that have not been previously addressed by the State. See Court's Order, Dkt. 1125, Paragraph II(F).

We would like to complete this conference prior to the deadline in the Order of April 15, 2007. Please advise of your availability as well as the names of the additional agencies, divisions and offices that you will be prepared to address. Thank you.

Theresa N. Hill



UNITED STATES | ENGLAND | GERMANY | CHINA

DARA D. MANN
dmann@faegre.com
(612) 766-7089

ATLANTA OFFICE: 678-627-8190

April 26, 2007

Richard T. Garren
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119

Re: State of Oklahoma vs. Tyson, et al.

Dear Mr. Garren:

I am writing to follow-up on the issues raised during the State's April 16 court-ordered meet and confer with Defendants regarding ESI. The State agreed to discuss Cargill's March 13, 2007 deficiency letter at that meeting. Other than that meeting, the State has provided no response to that letter, except Mr. Hammons' email of March 28, which sought clarification of the deficiency letter. I provided such clarification in an April 4 reply email.

At our April 16 meet and confer, Mr. Hammons spoke to the deficiency letter by stating that he believed Cargill's concerns would be addressed by the State's Supplemental Initial Disclosures. Because Cargill agreed to review the Supplemental Disclosures, which had not yet been served at the time of our meet and confer, no substantive discussion of the deficiencies occurred. Cargill has now reviewed the Supplemental Disclosures, and finds that the State's discussion of its ESI is still deficient under the Court's Order of December 5, 2006 (the "Order").

First, the State still has not provided any information on any topic regarding the following agencies, offices, and divisions of the State:

- Department of Mines;
- Corporation Commission;
- Department of Health;
- Governor's Office;
- State Legislature; and
- Any other agency, office or division of "the State" which might possess discoverable ESI.

EXHIBIT

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Mr. Richard Garren
 April 26, 2007
 Page 2

The State takes the position that it will only provide information contemplated by the Order as to those agencies which have information on which the State may rely. At the April 16 meet and confer, Defendants repeatedly objected to the State's restriction as inconsistent with the plain language of the Order. The Order requires discussion of all ESI discoverable under Rule 26. Rule 26 includes subpart (b) as well as subpart (a), and the State's attempt to restrict discovery of ESI to only that which may benefit its case is improper. Cargill requests that the State abide by its discovery obligations under the Rules of Civil Procedure and the Order, and address the ESI maintained and created by these relevant agencies, offices and divisions of the State.

Second, the State's general approach to responding to the Order by providing the names of custodians instead of the information required by the Order has not been remedied, and as discussed in my letter of March 13, remains insufficient.

Third, as discussed in my letter of March 13, the agency "questionnaires" do not provide sufficient information for all agencies regarding the following sections of the Order:

- § I(B)(6): identification of readily accessible ESI;
- § I(B)(7): identification of ESI which is not readily accessible;
- § I(B)(9): discussion of methods to ensure ESI integrity and preservation;
- § I(B)(10): identification of deleted ESI and the restoration thereof;
- § I(B)(11): discussion of searchability of e-mail;
- § I(B)(12): identification of ESI not intended to be searched;
- § I(B)(13): identification of potential problems in responding to electronic discovery;
- § I(B)(15): discussion of software necessary for reviewing produced ESI; and
- § I(B)(20): methods and costs of retrieving ESI from each system.

No section of the State's Supplemental Disclosures addresses the subject of these deficiencies, and the continued failure of the State to discuss these points of the Order must be resolved.

Further, my March 13 letter provided the State with a detailed list of the deficiencies apparent in the agency "questionnaires" provided. After review of the State's Supplemental Disclosures, it appears that the only additional information supplied by the State through its Supplemental Disclosures is the description of additional ESI at OCC and OSE, as detailed below. Therefore, Cargill resubmits its previous list of deficiencies. We address in bold additional concerns raised by the State's Supplemental Disclosures.

Mr. Richard Garren
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- § I(B)(3): The questionnaires provided some detail for most agencies regarding hardware, operating systems, applications, and servers, but the State did not provide a complete description of the nature, scope, organization, and format of databases and other applications and electronic storage systems used by each of the Agencies. Although this sort of information was provided as to some programs during the State's meet and confer, it was not provided in sufficient detail to allow Cargill to determine which applications and systems may have potentially responsive ESI;
- § I(B)(4): Limited historical information regarding the Agencies' records retention policies inasmuch as certain agencies generally referenced their compliance with the State of Oklahoma's General Records Disposition Schedule and various other schedules. However, these disposition schedules do not appear to protect potentially responsive info from destruction (as described below in the discussion of the State's deficient response to § I(B)(8) of the Order), and the State has not provided any additional detail regarding the Agencies' efforts to preserve potentially relevant ESI and hard copy documents following the onset of litigation. For example, when asked to provide information about the implementation of a litigation hold, the ODEQ referred back to the General Records Disposition Schedule, which is intended to purge rather than preserve documents, and the ODWC and OSRC simply left the questionnaire blank. Further, even if the General Records Disposition Schedule served as a preservation policy, the various agencies' description of this policy are themselves inconsistent. Where the ODAFF, OCC, ODEQ, and OTRD state that there have been no changes to this policy, the OWRB states that it has had "numerous amendments." Thus, the Agencies simply have not provided information about document preservation. To this end, for each Agency please provide the following:
 - Backup schedules for each application and system;
 - A description of janitorial services for all applications and systems;
 - A description of systems policies that may result in the deletion of ESI for all application, database and e-mail systems (e.g., mailbox size limits and e-mail retention periods);
 - A copy of all records retention policies for all Agencies, identifying retention periods for ESI and hard copy documents for all application, database and e-mail systems, including:
 - The ODWC April 28, 2005 Amendments to Records Disposition Schedule 82-18;
 - The policy implemented by the OWRB Executive Director on July 17th
 - The OTRD Records Disposition Schedule; and
 - All versions of and amendments to the General Disposition Schedule for the relevant time period [since 1952?];

Mr. Richard Garren
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- A description of the measures taken to suspend both systems and records retention policies with regard to potentially discoverable ESI once litigation commenced; and
 - A description of all measures taken to preserve potentially relevant ESI and hard copy documents once litigation commenced.
- § I(B)(5): Although the questionnaires provided some detail regarding hardware, operating systems, applications, and servers, the State has not identified the types and subject matter of potentially discoverable ESI in the Agencies' various systems and applications. Further, the State has not identified the specific electronic locations (whether in systems, applications, repositories, archives, media, etc.) containing all potentially discoverable ESI.
 - § I(B)(8): Although several agencies (such as the ODAFF, OCC, and ODEQ) state that they have not lost or destroyed any potentially discoverable ESI, these statements are contradicted by the same agencies' statements that disposition schedule procedures have not been suspended or otherwise altered. The General Records Disposition schedule, though, is not a litigation hold and does not have any provisions to address spoliation in this case.

Finally, as to the information that was actually provided by the questionnaires, Cargill has identified the following deficiencies:

Oklahoma Department of Environmental Quality

- The questionnaire states that "'Legacy' systems are retired and their data is moved to current systems[,]" but does not state what "legacy" system generated the ESI, where the data was historically housed, whether the backup tapes for the legacy system were destroyed, or what legacy data was migrated to live systems. **The Disclosures do not discuss legacy systems;**
- The questionnaire lists Microsoft SQL Database, File Maker Pro, and MS Access as platforms used by the agency but does not list the applications run from these platforms. **The Disclosures make no mention of the SQL Database, File Maker Pro, and MS Access platforms, but do identify electronic reports, GIS maps, and a SDWIS database. It is unclear if this ESI is related to, in addition to, or duplicative of the information provided on the questionnaire. If this is the same ESI earlier identified, the State still has not identified which applications run from the various SQL, File Maker Pro, and Access platforms and their functionality. If this is ESI not previously identified, in addition to the already-requested information about the applications and their functionality utilized by**

Mr. Richard Garren
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the SQL, File Maker Pro and Access platforms, the State must provide the platforms and applications of the newly-described ESI;

- The questionnaire states that “[u]ser PCs should not contain business data[,]” but it seems unlikely that no user ever employed any local save function. Please explain why “[u]ser PCs should not contain business data”. **The Disclosures do not discuss this issue;** and
- The questionnaire states that “[a]lthough we do not have a documented systematic approach to [document and data retention], it is widely understood . . .” but does not state what the retention system is but only references an attachment which was not provided. **The Disclosures do not discuss ESI retention.**

Oklahoma Department of Agriculture Food and Forestry

- The questionnaire provides a list of agency employees, but it not clear whether this is also a list of the agency’s ESI custodians or of some other group. **The Disclosures do not discuss ESI custodians;**
- Though the questionnaire provides a list of client side hardware, it is unclear whether this list includes laptops, desktops, other hardware, or some combination thereof. **The Disclosures do not discuss electronic hardware;**
- No legacy systems have been identified for this agency. **The Disclosures do not discuss legacy systems;**
- The questionnaire lists Access 2000 and Oracle 9i as platforms used by the agency but does not list the applications run from these platforms. **The Disclosures make no mention of the Oracle 9i platform, but do identify “electronic information” and an Access CAFO database. It is unclear if this ESI is related to, in addition to or duplicative of the information provided on the questionnaire. If this is the same ESI earlier identified, the State still has not identified which applications run from the Oracle 9i platform and their functionality. If this is ESI not previously identified, in addition to the already-requested information about the applications and their functionality utilized by the Oracle 9i platform the State has not provided the platforms and applications of the newly-described ESI;** and
- According to the questionnaire, no .pst email files are generated by this agency. Please confirm that this is the case. **The Disclosures do not discuss this issue.**

Mr. Richard Garren
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Oklahoma Conservation Commission

- The questionnaire states that identification of potentially responsive media, systems, and data types, including ESI from current systems, legacy systems, and backup tapes, will be forwarded separately, but we have not received this information.
- **The Disclosures describe electronic reports and sampling data, but do not identify the applications for this ESI; and**
- **The Disclosures do not discuss OCC's potentially responsive media, legacy systems, data types, or backup tapes.**

Oklahoma Tourism and Recreation Department

- **The Disclosures provide no discussion of the OTRD's ESI;**
- The questionnaire refers to an attached inventory list of systems housing potentially responsive data, but no such list was attached;
- No information was provided regarding the communication and enforcement of the retention policy for those employees who are not part of the "Executive Staff";
- In response to questions regarding legacy systems, the questionnaire states "n/a." It is unclear whether this means that the agency has no legacy systems or whether the agency intended something else by this response;
- No information was provided regarding the nature of any ESI that was potentially deleted after the onset of litigation;
- The questionnaire lists Microsoft Access 97, Microsoft Access 2003, and Microsoft SQL 2000 as platforms used by the agency but does not list the applications run from these platforms;
- The questionnaire states that a list of users that employ "other ISP's" for email was attached, but no such list was provided by the State, and no information was provided regarding the email retention and preservation policies of these users; and
- No back up systems or media were identified for this agency.

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Oklahoma Water Resources Board

- No information was provided regarding the migration of legacy ESI to current applications. **The Disclosures do not address legacy systems;**
- No years are provided with the dates which state when “procedures in compliance with the litigation hold were enforced within this department[;].” **The Disclosures do not address litigation holds;**
- The questionnaire does not discuss the location and retention of .pst files. **The Disclosures do not address this issue;** and
- The questionnaire lists Microsoft Access 2000 and Microsoft SQL 2000 as platforms used by the agency but does not list the applications run from these platforms. **The Disclosures make no mention of the Access 2000 or SQL 2000 platforms, but do identify BUMP ESI, electronic reports, algae counts, GIS maps, and SDWIS database ESI. It is unclear if this ESI is related to, in addition to or duplicative of the information provided on the questionnaire. If this is the same ESI earlier identified, the State still has not identified which applications run from the various Access 2000 and SQL 2000 platforms and their functionality. If this is ESI not previously identified, in addition to the already-requested information about the applications and their functionality utilized by the Access 2000 and SQL 2000 platforms, the State must provide the platforms and applications of the newly-described ESI.**

Oklahoma Department of Wildlife Conservation

- The questionnaire states that “various network shares” may house potentially responsive data but does not identify which network shares these are. **The Disclosures do not discuss network shares;**
- The questionnaire states that “various web-mail providers” are used by “field personnel,” but does not identify which web-mail providers these are or how the processing and storage of mail “varies by user”. **The Disclosures do not discuss this issue;**
- The questionnaire states that “individual users can potentially use various other [in addition to Microsoft SQL 2000] database applications” but does not identify which databases or users these are. **The Disclosures do not address this issue;**

Mr. Richard Garren
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- The questionnaire does not identify the “various versions” of Microsoft Word, Corel Word Perfect, Microsoft Excel, and Corel Quatro used by the agency. **The Disclosures do not discuss software versions;**
- No information was provided regarding the functionality of ARC IMS and the data generated and stored by this application. **The Disclosures do not discuss this issue;**
- The questionnaire does not identify the “various system, application, and user data” captured by back up tapes. **The Disclosures do not discuss this issue;**
- The questionnaire does not provide information regarding the timing, communication, and enforcement of the agency’s document retention policy and does not identify any retention policies in place prior to April 28, 2005. **The Disclosures do not discuss this issue;**
- No legacy systems were identified by the agency. **The Disclosures do not discuss legacy systems;**
- The agency’s email client was not identified. **The Disclosures do not discuss this issue;** and
- The questionnaire lists Microsoft SQL Server 2000 as a platform used by the agency but does not list the application(s) run from this platforms. **The Disclosures make no mention of the SQL Server 2000 platform, but do identify electrofishing sampling data and GIS maps. It is unclear if this ESI is related to, in addition to or duplicative of the information provided on the questionnaire. If this is the same ESI earlier identified, the State still has not identified which applications run from the various SQL Server 2000 platforms and their functionality. If this is ESI not previously identified, in addition to the already-requested information about the applications and their functionality utilized by the SQL Server 2000 platforms, the State has not provided the platforms and applications of the newly-described ESI.**

Oklahoma Scenic Rivers Commission

- **The Disclosures provide no discussion of the OTRD’s ESI;**
- According to the questionnaire, the agency does not utilize any databases. Please confirm that this is correct;

Mr. Richard Garren
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- The questionnaire indicated that a retention policy has been communicated verbally, but no substantive detail regarding this policy was provided and no detail was provided with regard to the efforts made to preserve potentially relevant ESI and hard copy documents once litigation commenced;
- The questionnaire states that the agency's data retention policy is to "generally keep[] email (except SPAM)", but does not state when this policy was implemented, the manner of its communication or enforcement, and when emails other than spam are not kept; and
- The questionnaire states that "E. Fite has lost emails due to system crashes in the past several months", and that "some emails [were] lost due to system crashes on Ed Fite['s] computer[,] but does not state the duration or extent of this loss, does not discuss the potential restoration of this ESI, and does not discuss methods to ensure the integrity of ESI going forward.

Office of the Oklahoma Secretary of the Environment

- **The questionnaire did not provide any information regarding this Office's ESI.**
- **The Disclosures describe electronic reports but do not identify the applications of platforms of this ESI;**
- **The Disclosure does not discuss OSE's legacy systems, data types, or backup tapes.**

Please contact me at your earliest convenience to set up a time to discuss these issues.

Very truly yours,



Dara D. Mann

cc: J. Trevor Hammons

fb.us.1983462.04

From: Theresa Noble Hill [mailto:THill@rhodesokla.com]
Sent: Friday, May 04, 2007 4:11 PM
To: Trevor Hammons; Richard Garren
Cc: Nicole Longwell; Philip Hixon; George, Robert W.; michael.bond@kutakrock.com; Vicki Bronson; Sanders; Griffin, Jennifer; Paul Thompson; jgraves@bassettlawfirm.com; Lori A. White; Mann, Dara D.; Candy J. Smith
Subject: re: ESI Issues

Trevor and Rick,

Pursuant to our discussions with the Court last week, we are writing to request our "Initial Conference" pursuant to the Court's ESI Orders #996 and #1125 for the Oklahoma Department of Mines, Oklahoma Department of Health, Oklahoma Corporation Commission, and the Governor's Office.

We also request a response to Ms. Mann's April 26, 2007 letter addressing the deficiencies in the supplemental ESI information that the State provided.

Theresa N. Hill
Rhodes Hieronymus

100 West 5th Street, Suite 400
Tulsa, Oklahoma 74103-4287
Telephone: 918/582-1173
Facsimile: 918/592-3390
thill@rhodesokla.com

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EXHIBIT

9

From: Mann, Dara D.
Sent: Thursday, May 17, 2007 4:24 PM
To: 'Trevor Hammons'; 'Richard Garren'
Cc: 'Theresa Noble Hill'
Subject: FW: State of Oklahoma v. Tyson

Mr. Hammons and Mr. Garren,

We are rapidly approaching the thirty day mark of no response from the State to the concerns raised by the Cargill Defendants regarding the State's ESI. We've inquired on more than one occasion as to when we can expect a response, but so far we have not yet received an answer to that question. If we have heard nothing further from the State by May 25th, we will assume that the State has no interest in discussing these matters further and will address our concerns with the Court. It is my sincere hope that this will not be necessary.

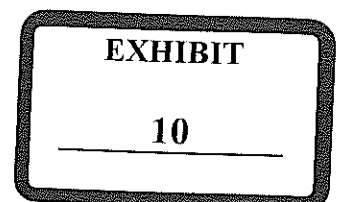
--Dara

From: Olmscheid, Kathy E.
Sent: Thursday, April 26, 2007 2:44 PM
To: 'rgarren@riggsabney.com'; 'thammons@oag.state.ok.us'; 'trevor_hammons@oag.state.ok.us'
Subject: State of Oklahoma v. Tyson

Attached is a letter from Dara Mann:



garren letter.pdf
(365 KB)



-----Original Message-----

From: Theresa Noble Hill

Sent: Thursday, May 17, 2007 4:32 PM

To: 'Trevor.Hammons@oag.ok.gov'; Mann, Dara D.

Cc: Richard Garren; Trevor Hammons; 'Nicole Longwell'; 'Phillip Hixon'; 'Paul Thompson'; James Graves; 'George, Robert W.'; 'michael.bond@kutakrock.com'; 'vbronson@cwlaw.com'; 'Griffin, Jennifer'; 'Sanders'; Lori A. White; John Tucker

Subject: RE: FW: State of Oklahoma v. Tyson

Trevor,

Dara is traveling today and tomorrow, but asked me to respond.

We are certainly willing to invite and involve the other Defendants in our discussions.

We are not entirely clear what you are proposing to discuss. Please confirm that you will be prepared to conduct our Initial Conference for the additional agencies as discussed with the Court on 4/27/07 and requested in my follow-up e-mail on 5/4/07. Please further confirm that you will be prepared to address all of the issues raised in Ms. Mann's 4/26/07 letter at the proposed conference.

We are anxious to address these long overdue issues and are certain that we can convene the Defendants prior to June 6. Please advise if you have any earlier availability. Otherwise, let's reserve your first available date.

Theresa

-----Original Message-----

From: Trevor.Hammons@oag.ok.gov [mailto:Trevor.Hammons@oag.ok.gov]

Sent: Thursday, May 17, 2007 3:55 PM

To: Mann, Dara D.

Cc: Richard Garren; Trevor Hammons; Theresa Noble Hill

Subject: Re: FW: State of Oklahoma v. Tyson

Dara,

We still wish to address your letter without the Courts intervention. There are items in your letter that were addressed by the Court, (additional agencies) that we need to discuss with all the defendants. I am out all of next week so I propose a meeting with all defense counsel regarding your and all other ESI issues on June 6th. June 6th is the first day that works for Rick and I because of discovery deadlines and depositions. Please let me know if that date works for you and all the other defendants.

Thanks,

Trevor

J. Trevor Hammons
Oklahoma Office of the Attorney General
Environmental Protection Unit
313 N.E. 21 St.
Office: (405) 522-2801
Fax: (405) 522-0608

EXHIBIT

11

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Kerry R. Lewis
Leslie J. Southerland
Nathan E. Clark
Theresa Noble Hill
Carlye O. Jimerson
Bradley S. Shells
Lindsay J. McDowell
Denelda L. Richardson
Maria E. Cervantes

Hal Crouch (1902-1947)
Chris L. Rhodes (1902-1968)
E. D. Hieronymus (1908-1994)
George W. Gable (1918-2000)

— Est. 1931 —

Daniel D. Draper, III
Of Counsel

RhodesHieronymus
O K L A H O M A

Reply to: Theresa Noble Hill
thill@rhodesokla.com

June 8, 2007

Richard T. Garren
Riggs Abney Neal Turpen Orbison & Lewis, Inc.
502 W. 6th Street
Tulsa, OK 74101

J. Trevor Hammons
State of Oklahoma
Assistant Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

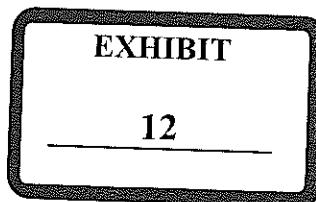
Re: *State of Oklahoma v. Tyson*
Our File No. 1790-2

Dear Trevor and Rick:

We have conferred with our co-defendants about your proposals concerning the State's ESI described during our conference call yesterday. Although we are disappointed that the State was not able to discuss the deficiencies outlined in Ms. Mann's April 26, 2007 letter during yesterday's meet and confer as expected, like the State we are anxious to move forward so that the production of responsive ESI may be completed by July 2, 2007, the date ordered by the Court with the agreement of all parties.

As we understand it, the State's proposal is that all interested parties schedule meetings between their ESI liaisons and "technical people" to discuss the mechanics of the ESI production to be made by the State. In advance of each meeting, the State will provide information regarding the ESI it has identified as responsive to the Defendants' discovery requests as well as the State's proposed method of producing said responsive ESI. The State proposes to hold the first meeting sometime during the week of June 18, 2007 for the Oklahoma Department of Environmental Quality (ODEQ), and then to proceed with other agencies in subsequent meetings, the dates of which are yet to be determined.

After fully considering the State's proposal, Defendants have concluded that the State's proposal will further and unnecessarily delay the State's production of ESI making completion of the State's ESI production within the Court's July 2nd deadline virtually impossible. Moreover, the State's proposal improperly shifts the State's and its counsel's burden to review and produce responsive ESI to the Defendants.



Via Email and Mail

Richard T. Garren
J. Trevor Hammons
June 8, 2007
Page 2

In an effort to streamline this process, Defendants propose instead that the State make its production of ESI determined to be responsive to each Defendant's requests in the format and media of the State's choosing, so long as that format and media are both reasonably usable and accessible. Though the Defendants' preference is that, to the extent practicable, all responsive ESI from the State be produced as TIFF images, from the Defendants' perspective, the key is to have a timely and complete production of responsive ESI within the Court-ordered deadline. As long as the information is (a) reasonably usable and accessible and (b) produced in such a manner as to allow each Defendant the ability to understand the information provided that is responsive to its specific requests, we will not quibble over the production format. To be clear,

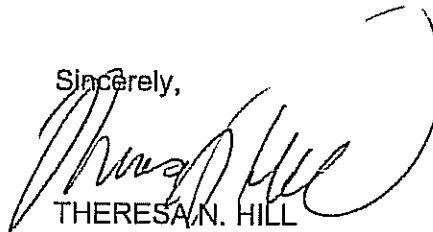
1. Defendants will agree to the format and media of the State's choosing, so long as that format and media are both reasonably useable and accessible;
2. Defendants will agree to whatever email search protocol is developed by the State, so long as that search protocol is reasonably anticipated to capture all email responsive to Defendants' discovery requests;
3. Defendants will agree not to demand wholesale production of embedded data or metadata in the State's responsive ESI; however, Defendants reserve the right to later request such embedded data or metadata upon a showing of special need; and
4. Defendants will agree not to demand wholesale production of deleted, backup or archival data that is not currently reasonably accessible by the State (for example, data that would require unusual restoration efforts such as with disaster recovery); however, Defendants reserve the right to later request deleted, backup or archival data upon a showing of special need.

In short, we are leaving it to the State to identify its responsive and reasonably accessible ESI and to produce it in a format and media that meets its obligations under Rule 34 to each Defendant by the Court's deadline.

After the State's production of ESI on July 2, 2007, we can continue our meet and confer process including, if necessary, addressing the previous meet and confer deficiencies discussed in Ms. Mann's letter (which are distinct from the production mechanics discussed above) and meetings of our respective "technical people."

We will write separately to address outstanding ESI issues between the State and the Cargill Defendants.

Sincerely,



THERESA N. HILL

TNH:law
cc: ESI defense liaisons



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

June 21, 2007

via e-mail

EXHIBIT

13

RE: State of Oklahoma v. Tyson Foods, Inc., et al. - ESI Production

Dear Counsel:

As memorialized in the Court's Order of May 17, 2007, the *parties agreed* that ESI production regarding currently outstanding discovery requests for the Defendants and OSRC, ODEQ, OWRB, OSE, and OKCC would be completed on or before July 2, 2007. (See Order, Dkt. 1150, p. 10). However, the critical component in meeting this production deadline – an agreement as to how the ESI information will be produced – is lacking. Despite the State's reasonable efforts to comply with the Court's guidance and work in conjunction with Defendants, we have been unable to determine the nature and format of the Defendants proposed ESI production.

It will be difficult to complete the ESI production in accordance with the agreed schedule when a clear consensus concerning the manner of the ESI production has not been reached. It is still our desire that an agreement amongst the parties be reached resulting in a uniform and consistent approach to the production of ESI.

Accordingly, the State is proposing that we have our court ordered meet and confer to discuss the production of ESI on Friday, June 22, 2007, specifically regarding format, identification and authentication of Defendants' ESI production, and any remaining issues that may exist with regard to the State's production. In order to expedite this process, we are making an effort to clearly outline our position and understanding of the ESI production set for July 2, 2007. The State is making a good faith effort to be reasonable and fair in order to expedite this production. We are hopeful that this letter addresses issues that will aid in a successful resolution of the ESI production.

DEFENDANTS' JULY 2, 2007, ESI PRODUCTION

The State has asked the Defendants to provide information on the types of ESI that they intend to produce in response to the State's discovery requests and the format for those productions. To date, only a few of the Defendants have provided the State with information on these subjects and that information is not complete. Further, the

ESI Production Ltr.
Page 2

State has previously expressed and continues to express a desire to obtain and produce ESI in its native file format. Despite these efforts, no consensus has been reached amongst the Defendants and the State pertaining to the type and format of Defendants' ESI production, which raises serious concerns about whether Defendants will be able to comply with their discovery obligations by the July 2, 2007, production deadline.

While some of the Defendants have provided information on a proposed format for emails, the proposed format is not acceptable to the State because it involves imaging of the electronic information. It is the State's position that ESI should be produced by all parties in its native file format, provided that the ESI is readily accessible with commercially available software or through some other agreed means. The Court provided guidance regarding ESI and specifically directed the parties to the Guidelines for Discovery of Electronic Stored Information for the District of Kansas. (See Order, Dkt. 1150). Taking into account the Court's guidance and direction, it appears clear to the State that ESI includes metadata.

The following is the State's response to the specific questions posed by Cargill-Defendants in its letter dated June 11, 2007, which may assist in the meet and confer, and identifies the State's concerns with Cargill-Defendants proposals:

1. In addition to email, the State is seeking all ESI responsive to the State's discovery requests in native format where it is readily accessible with commercially available software or by other agreed means. Because the Defendants have not provided sufficient information to the State identifying ESI that is not readily accessible, the State seeks to confer with the Defendants on the manner of production for such information. It is important to note that the State specifically objects to any time or geographic scope limitations arbitrarily placed on the Defendants' productions.
2. Cargill's proposal to produce emails in tiff format is unacceptable to the State because it will not contain all the metadata and will make searching the information more difficult and less effective than if it were produced in its native format.
3. The State is willing to discuss a limited production of ESI in something other than native format in the event that the information is not readily accessible. Because the Defendants have not provided sufficient information on the types of ESI they intend to produce, the State cannot presently determine whether some exception to this general rule could be agreed to by the parties.
4. Issues regarding authentication, manipulation, bates numbering, confidentiality, privilege, and redactions can and should be addressed in the meet and confer process that we are proposing. Such questions must be resolved with respect to

ESI Production Ltr.
Page 3

the particular ESI at issue. The State believes that it will be less costly to produce ESI in native format than the method proposed by Cargill.

The State is hopeful that a resolution may be reached in a meet and confer on June 22, 2007, with regard to Defendants production of ESI that is a good faith effort in keeping with the guidance provided by the Court. The State asks that each individual Defendant respond with what type of ESI they intend to produce and whether or not they will be producing ESI in native or some other format. Further, the State asks that each individual Defendant confirm whether they are taking the position that they have nothing to produce to the State on July 2, 2007.

PLAINTIFFS' PRODUCTION OF ESI SCHEDULED FOR JULY 2, 2007

In accord with the guidance and direction provided by the Court with regard to ESI, the State has taken and continues to take the steps necessary to proceed with the production of ESI currently set for July 2, 2007. The State is currently pulling the ESI for the "outstanding" agency productions (ODEQ, OWRB, OSE, OKCC, and OSRC).

Please be advised that, contrary to the assertion in your June 8, 2007, letter, the State has never attempted to shift the burden of initial review and production of ESI to the Defendants. The State is attempting - in good faith - to expedite the production of ESI. It is the State's understanding that per the Court's Order the parties are required to meet and confer regarding how ESI will be produced. However, it now appears the Defendants are informing the State for the first time that they do not care how ESI is produced so long as "the format and media are both reasonably usable and accessible."

Thus, it is the State's understanding that the following is agreed to by the parties:

1. The State will be producing its responsive databases, reports and spreadsheets in native format and will indicate to which requests that database, report or spreadsheet is responsive.
2. If any of the databases require proprietary software to access a database, the State will inform you of this before the production.
3. The State will be producing email in native format which will enable the Defendants to search the emails for the information that they seek.

Please provide us with a time on June 22, 2007, when you are available to meet and confer on these issues. Additionally, the State is mindful of the Court's Order to

ESI Production Ltr.

Page 4

meet and confer regarding scheduling of productions at the remaining agencies and will discuss this issue at a mutually agreeable time.

We are hopeful the Defendants will provide the State with the information required to reach agreement on their productions so that these issues may be resolved judiciously between the parties.

Sincerely,

A handwritten signature in black ink that reads "Alan Barnett". The signature is fluid and cursive, with the first name "Alan" and last name "Barnett" clearly distinguishable.A small, handwritten signature in black ink, likely belonging to John Trevor Hammons, positioned to the left of his printed name.

John Trevor Hammons
Assistant Attorney General



UNITED STATES | ENGLAND | GERMANY | CHINA

DARA D. MANN
dmann@faegre.com
(612) 766-7089

ATLANTA OFFICE: 678-627-8190

June 26, 2007

VIA E-MAIL

Mr. John Trevor Hammons
Office of Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma, City, OK 73105

EXHIBIT

14

Re: State of Oklahoma v. Tyson, et al.
Case No. 05-CV-0329 GKF-SAJ

Dear Mr. Hammons:

This letter responds to your June 21st correspondence, the matters discussed during our teleconference the afternoon of June 22nd, and to your electronic communication of June 25th.

With regard to your June 21st letter to all Defendants, the State made several statements which are either inaccurate or inapplicable insofar as the Cargill Defendants are concerned. First, your letter suggests that the State has been unable to determine the nature and format of the Cargill Defendants' ESI production and/or that the information provided in this regard is "not complete." However, as early as April 26, 2007, the Cargill Defendants initiated communication with the State regarding the parameters of their remaining ESI production. Since that time the Cargill Defendants have exchanged additional communication (dated May 16th and June 11th) further delineating their anticipated ESI production and attempting, if possible, to reach an agreement with the State in this regard. Given the correspondence that has been exchanged prior to June 21st as well as the length of time that has passed since the Cargill Defendants commenced this discussion, the State has had ample opportunity to address and resolve any concerns it had with the Cargill Defendants' proposed production.

Second, your letter improperly suggests the Cargill Defendants have not identified for the State ESI that is not reasonably available. Yet, this very topic (among many others) was covered during the ESI meet and confer between the State and the Cargill Defendants on January 12, 2007.

Mr. John Trevor Hammons
June 26, 2007
Page 2

Third, though we need not resolve the issue at this time in light of the agreement reached during the June 22nd teleconference, the Cargill Defendants continue to disagree with the State that production of responsive ESI in native format is less costly than production in TIFF format. Beyond the costs associated with duplicating electronic storage systems, databases and software, there are intangible costs associated with native format productions including, for example, the capacity for manipulation and the inability to properly manage information through Bates numbering, redaction, and designation of confidentiality and privilege.

Fourth, your letter states that the agreement among the parties with regard to the State's ESI production as to outstanding discovery requests was limited to producing ESI from OSRC, ODEQ, OWRB, OSE and OKCC on July 2nd. However, our understanding of the parties' agreement as well as our reading of the plain language of the Court's Order memorializing that agreement was that all of the State's responsive ESI, not just the identified agencies, would be produced on July 2nd. Neither our agreement nor the Order contemplated production of responsive ESI after July 2nd, and contrary to the State's apparent position, the Cargill Defendants believe there is a distinction between delayed production and "supplemental" production.

That said, we are pleased that the parties were able to reach at least a partial agreement during Friday's teleconference with regard to ESI production. Our understanding of the agreements reached are as follows:

The Cargill Defendants' July 2, 2007 ESI Production

The State has agreed to the ESI production protocol set forth by the Cargill Defendants. As noted in my April 26th and July 11th correspondence, this means that responsive ESI in the Cargill Defendants' communications systems (e.g. Outlook, Word, Excel, PowerPoint, etc.) will be produced in TIFF format with native text extracted in load files so that they are searchable. To confirm, email attachments with responsive information will also be produced in TIFF with native text extracted, and the load file will identify for the State the "parent" email associated with each attachment. Please note, however, that to the extent a "parent" email is responsive but one or more attachments are not responsive, neither the non-responsive attachment nor the text of the non-responsive attachment will be produced.

As also noted in my April 26th correspondence, the Cargill Defendants have already produced ESI from their productivity systems (e.g. FICIMS, BILLS, REPETE, TFS etc.). The Cargill Defendants do not anticipate making any further production of ESI contained in these systems at this time. However, should the State desire reports generated from these

Mr. John Trevor Hammons
June 26, 2007
Page 3

systems in a format different from that previously provided, we are certainly willing to consider such a specific request when and if made.

Except as set forth in the production protocol attached to my June 11th letter, this letter will confirm that the Cargill Defendants are not producing metadata or embedded data. Without rehashing our prior correspondence on this issue, the Cargill Defendants disagree with the State's position that either the Court's "guidance and direction," the District of Kansas Guidelines or applicable case law support a blanket production of metadata or ESI in native format. Nevertheless, the Cargill Defendants will preserve and continue to maintain responsive ESI in native format with applicable metadata in the event the necessary predicate for native format or metadata production is ever established.

The State's July 2, 2007 ESI Production

For the record, the Cargill Defendants repeat their concerns about the State's proposed ESI production in native format, and we again note that the Cargill Defendants have not asked the State to produce its responsive ESI in this manner. It is our position that all the State is obligated to produce to the Cargill Defendants is the ESI responsive to their specific requests and, frankly, that is all the ESI the Cargill Defendants want at this time. Nevertheless, the Cargill Defendants have agreed to accept the State's responsive ESI in native format based on the State's express representation that it will provide the Cargill Defendants the precise information, queries and technical support, if necessary, that will allow them to identify the ESI specifically responsive to their requests.

The State's ESI production will proceed as follows:

1. Responsive email will be produced in .pst format;
2. Responsive office productivity files (Word, Excel, PowerPoint, Adobe, etc.) will be produced in native format;
3. Responsive MS Access tables will produced in native format; and
4. Responsive GIS data not available online will be produced in native format along with ArcView software.

With regard to databases containing responsive information, it is our understanding that the State believes it to be more efficient and cost-effective for it to produce the databases in their entirety in native format. For ORACLE and SQL databases, the State will ascertain whether responsive data can be provided utilizing MS Access or as direct reports. As indicated during Friday's teleconference, the Cargill Defendants do not believe that simply providing ORACLE or SQL databases will allow responsive data to be sufficiently identified through queries because of the interface required with these systems. Therefore, if it is not possible for the State to provide the responsive information from these databases by converting them to an MS Access format, including an appropriate interface within MS

Mr. John Trevor Hammons
June 26, 2007
Page 4

Access to identify responsive data, or as direct reports, we will expect the State to identify an alternate method of production that renders the responsive data or information from ORACLE and SQL databases reasonably useable. In any event, for every database produced by the State, the State will provide to each defendant the specific queries that will allow the defendant to ascertain the data or information responsive to its requests.

Finally, it is our understanding that the State will produce ESI in accordance with the above parameters on July 2nd for ODEQ, OWRB, OKCC and OSRC. As noted during Friday's call, it is the Cargill Defendants position that the agreed and Court ordered deadline of July 2nd applies to all agencies with information responsive to their outstanding discovery requests, not just ODEQ, OWRB, OKCC, and OSRC. Given the State's apparent inability to comply with the Order as to the remaining agencies with responsive information, the defendants requested at a minimum that the State provide them with an anticipated schedule for completion of the State's hard copy and electronic production on June 25th. We will address under separate cover your email communication of June 25th purportedly responding to the defendants' request.

To facilitate the State's production, the Cargill Defendants will provide the State with a hard drive that the State can use to store the ESI responsive to the Cargill Defendants' discovery requests. So that we can properly identify the source of the information contained on the hard drive once the State completes its download of responsive information, we ask that the State provide the responsive data in a folder structure that identifies the source and/or custodian of each data set provided.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Mann', with a stylized flourish at the end.

Dara D. Mann

MANDD

cc: Richard Garren
Theresa Hill

fb.us.2139417.01

**RHODES, HIERONYMUS, JONES, TUCKER & GABLE, P.L.L.C.
LAWYERS**

| | | | |
|--|--|---|---|
| ONEOK Plaza 100 West 5 th Street, Suite 400 Tulsa, Oklahoma 74103-4287 Telephone (918) 582-1173 Fax (918) 592-3390 www.rhodesokla.com Mailing Address P.O. Box 21100 Tulsa, Oklahoma 74121-1100 | Chris L. Rhodes, III Bert M. Jones John H. Tucker Jo Anne Deaton Dan S. Folluo Ann E. Allison Andrew D. Downing Bradley A. Jackson Colin H. Tucker Kerry R. Lewis | Leslie J. Southerland Nathan E. Clark Theresa Noble Hill Margaret M. Clarke Cariye O. Jimerson Bradley S. Shells Lindsay J. McDowell Denelda L. Richardson Maria E. Cervantes | Hal Crouch (1902-1947) Chris L. Rhodes (1902-1966) E. D. Hieronymus (1908-1994) George W. Gable (1918-2000) — Est. 1931 — Daniel D. Draper, III James D. Johnson <i>Of Counsel</i> |
|--|--|---|---|

RhodesHieronymus
O K L A H O M A

Reply to: Theresa Noble Hill
THill@rhodesokla.com

June 27, 2007

VIA HAND DELIVERY

Richard T. Garren
Riggs Abney Neal Turpen Orbison & Lewis, Inc.
502 W. 6th Street
P.O. Box 1046
Tulsa, OK 74101

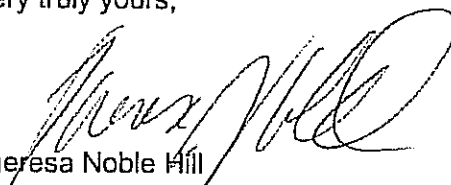
Re: *State of Oklahoma v. Tyson*
Our File No. 1790-2

Dear Richard:

Please find two hard-drives that the State can use to store ESI responsive to the Cargill Defendants' written discovery. One hard drive is for the State's responsive ESI to Cargill Turkey Production, LLC's discovery, and the other is for the State's responsive ESI to Cargill, Inc.'s discovery.

Please do not hesitate to contact us should you have any questions or concerns.

Very truly yours,


Theresa Noble Hill

TNH:law
Enclosures

EXHIBIT

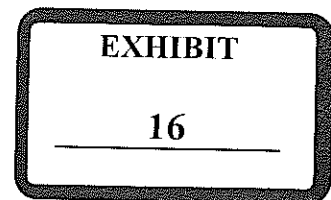
15

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

| | | |
|------------------------------|---|-----------------------|
| STATE OF OKLAHOMA, ex rel., |) | |
| W.A. DREW EDMONDSON, in his |) | |
| capacity as ATTORNEY GENERAL |) | |
| OF THE STATE OF |) | |
| OKLAHOMA, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| -vs- |) | No. 05-CV-329-GKF-SAJ |
| |) | |
| TYSON FOODS, INC., et al., |) | |
| |) | |
| Defendants. |) | |

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE SAM A. JOYNER
UNITED STATES MAGISTRATE JUDGE

JUNE 28, 2007



REPORTED BY: BRIAN P. NEIL, CSR-RPR, CRR, RMR
United States Court Reporter

1 new.

2 THE COURT: No, I understand that. And
3 the state has agreed to the Cargill rule so at least
4 apparently we have everything ready for the July 2nd
5 production.

6 MR. BULLOCK: Now --

7 THE COURT: We have these other disputes
8 that are boiling.

9 MR. BULLOCK: Okay. Well, the one thing
10 that I do want to make clear -- and, like I say, we're
11 with a number of the defendants on this -- we will
12 have some of our e-mail on the 2nd. Unfortunately, we
13 haven't been able to finish all of it, but I'm giving
14 people fair notice that we're working on it and we'll
15 proceed promptly, as I'm sure they will to complete
16 theirs, but we're working towards completion of
17 that.

18 THE COURT: Okay.

19 MR. BULLOCK: Are you --

20 MR. MCDANIEL: Judge, just for Your
21 Honor's benefit, to give you a little more flavor of
22 it, to reinforce why I don't think we're going to
23 conclude anything today, when we had our conversation
24 on Friday and the state provided some additional
25 information about what they were going to produce and

1 databases which may be variously produced on the 2nd
2 or soon thereafter.

3 The one thing that we did raise this for,
4 though, was for this reason, Judge, is that, as I
5 said, we're not categorizing all -- we're not doing
6 our production in this dictated manner that they have
7 and we're not categorizing it according to their
8 discovery request.

9 In terms of burdensomeness, if, in fact, it
10 is people's intent to press us to actually make the
11 production in that manner; that is, according to the
12 various interrogatories of each of them, or requests
13 for production, then we need to know that now, or at
14 least before we do the production, rather than ending
15 up in the situation that we keep flirting with in
16 terms of the hard-copy production so that we don't end
17 up burdening these agencies to produce all of this
18 data and then to be told that they need to go back and
19 parse it out and divide it up and do all of this
20 again.

21 We really want to do this only once and want
22 to -- truly want to satisfy -- I mean, I don't like
23 being here when the court's frustrated like you were
24 earlier. That's the reason why we're here. We need
25 to do this right but we need to do it efficiently and

1 THE COURT: Okay.

2 MR. BULLOCK: Judge, I didn't say that
3 we weren't ready, and if that's the court's
4 preference, we will.

5 But I will tell you that we're not going to
6 parse these -- parse the defendants' discovery out so
7 that what Peterson says is responsive to theirs they
8 get and what Tyson says is responsive to theirs they
9 get. We're going to do what the rule provides and
10 give them in native format and with careful attention
11 to limit that within the technical bounds of what you
12 can limit with ESI because that becomes a technical
13 question which is way beyond my expertise to be able
14 to opine with any intelligence.

15 But this concept that in a database it
16 is -- you can parse them in that way I don't think is
17 either technically correct or is responsive under the
18 rule that is -- but I guess what -- you know, truly
19 part of my motive in doing this, Judge, or what I was
20 responding to, is a real sense of frustration on our
21 side of what we consider to be some shifting
22 expectations.

23 I would suggest that this is an area where
24 the two sides working with a technical expert over the
25 next 30 days -- and hopefully quickly we can locate

1 one -- that we can find a way to do this that will get
2 this off of everybody's docket. But so far that has
3 been elusive in spite of extensive hours in meeting
4 and conferring.

5 I just need for my client to do this right
6 and do it the first time and not be in the fight that
7 we've been in.

8 THE COURT: So are you segregating
9 Tyson, Cargill, and the others from each other or is
10 it all in one --

11 MR. BULLOCK: It will all be in one. We
12 will show them the databases which are within the
13 universe of the information which has been requested.

14 To the extent that those databases can be
15 copied, we will copy them and explain to them how to
16 search them. To the extent that those are databases
17 which need to be searched at the agencies, we will
18 give them access to those databases and, again,
19 provide them with information in what technical level
20 they need it so that they can find the information
21 which they want.

22 That is imminently reasonable when it comes
23 to ESI. It is not a matter of -- I'm just amazed that
24 somebody says, when it comes to electronic data, that
25 we should have to parse out the different answers to

1 the discovery requests when once anybody sits down in
2 front of those databases, it is easy for any of them
3 to find what they want specifically as it is for us.

4 THE COURT: All right. We're going to
5 have to get out of here. We're going to have people
6 fainting.

7 Mr. McDaniel, you heard what the government
8 has to say. They would like to put it off 30 days and
9 work on the process. Do you want to go ahead and have
10 production like it is? I mean, you've heard what
11 they're going to produce. Do you want to go ahead and
12 get that production and then fight about the problems?

13 And I have the same question for the other
14 defendants. If you want production on the 2nd, the
15 court will continue with that date and then we'll
16 fight about the problems later.

17 MS. MANN: Your Honor, if I may, I think
18 the concern that I have about what I've just heard
19 here today is the production, as it's been described
20 today, is not what was agreed to among the parties in
21 a teleconference we had just a week ago.

22 We did not agree to accept their information
23 on a statewide basis that was responsive to every
24 single defendant's request. What we said was, if it
25 is easier for the state to produce this information in

1 ahead and see what they get. I see no reason --

2 MR. BULLOCK: I just want it to be clear
3 on the record that they are putting us to expense and
4 that -- and that that has to weigh against any type of
5 redo later because we have offered to accommodate them
6 to be sure that we avoid that and they're taking that
7 at their risk now.

8 THE COURT: All right. That's a matter
9 of the record.

10 Mr. Tucker inquired about the date on which
11 subsequent e-mail issues would be resolved. Does the
12 state have a date for that?

13 *(Discussion held off the record)*

14 MR. BULLOCK: We anticipate completing
15 this within the month, Your Honor.

16 THE COURT: Okay. That's the answer to
17 your question, Mr. Cargill -- Mr. Cargill --
18 Mr. Tucker. You guys --

19 MR. TUCKER: I wish it were
20 Mr. CarGill.

21 THE COURT: Yeah, I understand.
22 Although I understand you're not agreeing to that
23 delay and the court's not condoning it. It's just a
24 matter of record at this point.

25 MR. TUCKER: Does "within the month"

1 mean today?

2 THE COURT: I think it means within 30
3 days --

4 MR. TUCKER: All right.

5 THE COURT: -- of the 2nd, yeah.

6 All right. We're going to have to get out of
7 here. We've gone further into this than we thought we
8 would.

9 MR. TUCKER: May I make one more proffer
10 before Your Honor closes the court for the day?

11 THE COURT: Certainly.

12 MR. TUCKER: It's come to our attention
13 that Local Rule, Appendix (k), from the Northern
14 District of Ohio has just been approved by that court.
15 I'll offer a copy to counsel for plaintiff.

16 What this is, that district has actually gone
17 beyond the magistrate judge's article in Kansas and
18 has now entered rules with regard to default standards
19 for ESI which is rather interesting.

20 THE COURT: Yeah, I'd like to see it. I
21 know the District of Maryland has a 34-page guideline,
22 which is --

23 MR. TUCKER: This one is very simple.

24 THE COURT: -- so big it's useless.

25 MR. TUCKER: This one is very simple.